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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,512	10/09/2001	Toru Mineyama	09812.0172-00000	6341
22852	7590	05/27/2009		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER VAN BRAMER, JOHN W	
			ART UNIT	PAPER NUMBER
			3622	
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			05/27/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/973,512

Applicant(s)

MINEYAMA ET AL.

Examiner

JOHN VAN BRAMER

Art Unit

3622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009 and 12 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 9, 17, 19, 20 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 9, 17, 19, 20 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/3508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 12, 2009 has been entered.

Response to Amendment

2. The amendment filed on January 27, 2009, and the RCE filed on March 12, 2009, cancelled no claims. Claims 1, 9, 17 and 31 were amended and no new claims were added. Thus the currently pending claims addressed below are claims 1, 9, 17, 19, 20, and 27-34.

Claim Rejections - 35 USC § 112

3. The 35 U.S.C. 112 rejection of claim 19 is maintained. The applicant's specification does not describe the programs that the first viewer "absolutely wishes to view". The cited passage of the applicant's specification (page 43) describes the user inputting information regarding programs that the user wants to view without failure and calling these groups an "absolute viewing program group". Since claim 1, from which claim 19 depends discloses that the reorganization of the second electronic television

Art Unit: 3622

programming guide is done in accordance with the first viewer tendency information which is generated on the basis of a viewing log that stores information about programs viewed on the terminal apparatus, but does not indicate that the first viewer inputs information regarding an "absolute viewing program group" the applicants recitation in claim 19 that the second programming guide includes a group of programs that the first viewer absolutely wishes to view is not supported in the specification. The examiner suggests, amending claim 1 to include the input of such information and generating the second programming guide based on both the viewing log and the "absolute viewing program group" that is input directly by the first viewer. The examiner also suggests using the actual terms found within the specification such as "wants to view without failure" instead of "absolutely wishes to view".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, 17, 19, 20 and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler (U.S. Patent Number: 5,758,259) in view of Cannon (U.S. Patent Number: 6,029,176)

Claims 1, 9 and 17: Lawler discloses a server operational expenses collecting method, a server, a computer-readable medium comprising:

- a. Generating first viewer tendency information for a first viewer on the basis of a program viewing log, the program viewing log storing information about programs viewed by the first viewer on a terminal apparatus, the first viewer tendency information indicating the first viewer's tendency to view programs on the terminal apparatus, wherein the first viewer tendency information includes values for titles of the programs viewed by the first viewer. (Fig. 3b; Fig. 3c; Col 2, lines 3-30; Col 2, lines 41-44; and Col 5, line 52 through Col 6, line 21)
- b. Reorganizing a first electronic television program guide into a second electronic television programming guide tailored to the first viewer, the reorganizing being done in accordance with the first viewer tendency information. (Col 4, lines 42-57; and Col 5, lines 21-40)
- c. Generating customer analysis information based on the first viewer tendency information. (Col 7, line 62 through Col 8, line 34)

While Lawler does not specifically state that it provides the customer analysis information to an advertiser or collects expenses for the provision of customer analysis information from the advertiser, the analogous art of Canon (U.S. Patent Number: 6,029,176) teaches that it is well known to provide television viewing habit information to advertisers and to charge advertisers for providing them with such information (Col 2, lines 1-48). Therefore, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to provide the customer analysis information to the advertiser for a fee. The rationale for doing so is that common sense dictates that the monitoring and gathering of such information is costly and that one would use commonly known methods for generating a revenue stream to help offset said cost since selling the gathered information to advertisers is one of a limited number of predictable methods for generating a revenue from the gathered information. Additionally, one would be motivated to provide such information to advertisers in order to provide advertisers with effective tools for real-time response to questions about viewing habits and to help them to determine or estimate the probable effectiveness of a given advertising strategy (Canon: Col 2, lines 1-48)

Claim 19: Lawler and Canon disclose the server operational expenses collecting method according to claim 1, wherein the second electronic programming guide includes a group of programs that the first viewer wants to view. (Lawler: Col 5, line 52 through Col 6, line 33)

Claim 20: Lawler and Canon disclose the server operational expenses collecting method according to claim 1 wherein the second electronic programming guide organizes programs into virtual channels, each virtual channel including programs from a plurality of program channel frequency bands. (Lawler: Fig. 3b; and Col 4, lines 42-57)

Claim 28: Lawler and Canon disclose the method according to claim 1, wherein the program viewing log includes a length of time the programs were viewed, and wherein generating first viewer tendency information includes determining whether the length of time each of the programs was viewed exceeds a threshold. (Lawler: Col 10, lines 6-19)

Claim 29: Lawler and Canon disclose the method according to claim 28, wherein the threshold is higher for programs of different categories. (Lawler: Col 5, lines 20-40; and Col 10, lines 6-19)

Claim 30: Lawler and Canon disclose the method according to claim 29. While Lawler and Canon do not specifically state the threshold for a news category is lower than a threshold for a drama category, Lawler does disclose that viewers receiving the information may be periodically polled in order to acknowledge their presence and assuring that the program is being received by the viewer in Col 10, lines 6-19. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the polling must take place over the duration of the program itself. Thus, programs with shorter duration, such as news program would require a lower threshold than programs such as dramatic movies which have a longer duration. The rationale for such a lower threshold is that common sense dictates that polling for a 30 minute program must occur within the first 30 minutes in order to be sure the

viewer watched the program, while polling for a 2 hour movie can occur any time within the 2 hour time frame. As there are a limited number of predictable thresholds from which to choose for polling within a program of a given time length and the viewer initially chose to watch the program, it would be predictable to choose a threshold that is closer to the end of any given program in order to ensure that that majority of the program was indeed viewed by the viewer.

Claim 31: Lawler and Cannon disclose the method of claim 1, wherein the first viewer tendency information includes values for titles, categories, and keywords of the programs viewed by the first viewer. (Lawler: Col 5, line 52 through Col 6, line 33)

Claim 32: Lawler and Cannon disclose the method of claim 31, further comprising providing the first viewer with a button for inputting a program rating for the programs viewed by the first viewer. (Lawler: Col 10, lines 20-30)

Claim 33: Lawler and Cannon disclose the method of claim 32, further comprising incrementing the value for the title, category, and the keyword of a program being watched when the viewer presses the button. (Lawler: Col 5, lines 4-7; and Col 10, lines 20-30)

Claim 34: Lawler and Cannon disclose the method of claim 33, further comprising using the value for the title, the category, and the keyword of the program being watched when the first viewer presses the button to determine other programs to include in virtual channels in the second electronic television programming guide. (Lawler: Col 2, lines 3-30; Col 8, lines 45-62; and Col 10, lines 6-30)

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawler (U.S. Patent Number: 5,758,259) in view of Cannon (U.S. Patent Number: 6,029,176) as applied to claim 1 above, and further in view of Williams et al. (U.S. Patent Number: 5,977,964)

Claim 27: Lawler and Cannon disclose the method according to claim 1, wherein the program viewing log includes program titles, program categories, and program keywords (Fig. 3b; Fig. 3c; Col 2, lines 3-30; Col 2, lines 41-44; and Col 5, line 52 through Col 6, line 21). While Lawler and Cannon do not specifically that the date and day of the week on which programs viewed by the first viewer were broadcast, Lawler does disclose displaying preferred programming available on a date and at a time selected by the viewer (Col 4, lines 43-57). Thus such information is available in the invention disclosed by Lawler. The analogous art of Williams discloses gathering viewer habit information including the day and time in which a user views programming (Williams: Col 7, line 31 through Col 8, line 3; Col 12, lines 40-44; and Col 15, line 64 through Col 16, line 18). Thus it would have been obvious to one of

ordinary skill in the art at the time the invention was made to include the date (which includes the day of the week) on which programs were viewed. The rationale for including the date is that Lawler discloses in Col 5, line 60 through Col 6, line 7, that most viewers have relatively regular viewing habits and determining a viewing history will highlight such habits. He further discloses that to the extent the viewing habits remain unchanged, the viewing history can provide a relatively accurate basis for predicting or selecting the future programming that the viewer would prefer to receive. Thus, including the date in the viewing history would provide an indication of when or if changes in viewing habits occur and thus allow for the determination of how stable the viewing habits are.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 9, 17, 19, 20, and 27-34 have been considered but are not persuasive.

a. The applicant argues that MPEP 2173.05(e) provides that there is no requirement that the words in the claim must match those used in the specification and as such there is support in the specification for the limitations imposed by claim 19 for the claimed inclusion in the second electronic programming guide of programs that the first viewer absolutely wishes to view. While MPEP 2173.05(e), does provide that the words in the claim do not have to match those used in the specification, it does not allow for claiming operations that are not disclosed in the specification. As stated in the 35 USC 112 rejection,

the problem is not semantic in nature but rather operational based on the limitations disclosed in independent claim 1 from which claim 19 depends. The specification indicates on page 43 that the user must **input** information regarding the programs they wish to view without fail ("absolutely wishes to view") and these are then part of an "absolute viewing program group". However, claim 1, from which claim 19 depends discloses that the reorganization of the second electronic television programming guide is done in accordance with the first viewer tendency information which is **generated on the basis of a viewing log** that stores information about **programs viewed** on the terminal apparatus, but **does not indicate that the first viewer inputs information** regarding an "absolute viewing program group" or any other direct user inputted preferences. Thus, the applicant's recitation in claim 19 that the second programming guide includes a group of programs that the first viewer absolutely wishes to view is not supported in the specification because there is no user input of such information by the user. The applicant argues that Lawler does not disclose "generating first viewer tendency information for a first viewer on the basis of program viewing log ... wherein the first viewer tendency information includes values for titles of the programs viewed by the first viewer". However, it is clear from Fig 3b, that the value for titles of the programs viewed is included in the viewer tendency log. Fig 3b, discloses the first viewer tendency (personal preference), along with the alphanumeric value for the title (Kung Fu: The Legend Continues). As well as the other characteristics of programming that the viewer selects or receives (Col

5, line 53 through Col 6, line 43). Thus, Lawler discloses the limitations of the claim as currently written, including the values for titles of the programs viewed as required by independent claims 1, 9, and 17, as well as dependent 31.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the

Art Unit: 3622

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John Van Bramer
/John Van Bramer/
Examiner, Art Unit 3622